

STATE BOARD OF EQUALIZATION

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Executive Director

June 24, 1999

Gerald D. Cochran, County Assessor
County of Del Norte
482 G Street
Crescent City, California 95531

Re: Taxation of Indian Land

Dear Mr. Cochran:

This is in response to your letter dated April 22, 1999, in which you express the following opinion:

My position is that if the land is taken "in trust" by the United States of America, and the land was not part of the original Reservation or Rancheria, then as we discussed, I will charge a Possessory Interest to the tribe or person that controls that property. On the other hand, the land within a Reservation or Rancheria will be treated as exempt land.

Unfortunately, I must disagree with this opinion. Section 465 of the Indian Reorganization Act grants the Secretary of the Interior authority to place land in trust, to be held by the federal government for the benefit of the Indians and to be exempt from state and local taxation after assuming such status:

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, and interest in lands . . . within or without existing reservations . . . for the purpose of providing land for Indians.

Title to any lands . . . shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands . . . shall be exempt from State and local taxation. 25 U.S.C. § 465.

In section 465, Congress has explicitly set forth a procedure by which lands held by Indian tribes and "individual Indians" may become tax-exempt. (*Cass County, Minnesota, et al. v. Leech Lake Band of Chippewa Indians* (1998) 524 U.S. 103.) Accordingly, the Legal Staff of the Board of Equalization has previously recognized that land and improvements held by the federal government in trust for an Indian tribe are not subject to property taxation. (SBE Annotation 525.0010 C 4/1/81.) Thus, we agree with the following excerpt from the opinion letter from the law firm of dated March 24, 1999: "[T]he County of Del Norte has no

power or authority to impose any tax on any lands that are conveyed to the United States of America pursuant to Title 25 of the United States Code §476, the titles to which the United States accepts to hold in trust for the benefit of the Tribe.”

I also note that the letter from the United States Department of the Interior dated January 28, 1999, notifying you of the application seeking acceptance of the subject property “in trust” states that Mr. _____ is a “member of the _____” Indian tribe. Assuming that this is true, if the subject property is taken in trust by the federal government for Mr. _____, then (1) the property will not be subject to property taxation and (2) Mr. _____’s use of the property will not constitute a taxable possessory interest.

On the other hand, if the property is taken in trust by the federal government per the pending application and thereafter used by a non-Indian lessee, then a taxable possessory interest rightfully may be imposed upon such subsequent usufructory use. This, of course, assumes that the requirements of section 107 of the Revenue and Taxation Code are satisfied. (*The Fort Mojave Tribe v. County of San Bernardino* 543 F.2d 1253 (9th Cir. 1976); *Agua Caliente Band of Mission Indians v. County of Riverside* 442 F.2d 1184 (9th Cir. 1971); *Palm Springs Spa, Inc. v. County of Riverside* (1971) 18 Cal.App.3d 372.)

Thanks for the submitted material. If you have any further questions, please do not hesitate to call me at (916) 324-6593.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,



Robert W. Lambert

RWL:jd

H:/property/genexemp/1999/09rwl

cc: Mr. Richard Johnson – MIC:63
Mr. David Gau – MIC:64
Ms. Jennifer Willis – MIC:70